

Hargrove
Signature of Sponsor

AMEND Senate Bill No. 1479

House Bill No. 462*

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

by deleting all language following the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 46-2-302(e), is amended by deleting the current language in its entirety and by substituting instead the following:

(e)

(1) As used in this subsection, unless the context otherwise requires:

(A) "Net earnings" means:

(i) All net income excluding capital gains; or

(ii) An amount not exceeding five percent (5%) of the fair market value of the trust as of the last day of the trust fiscal year immediately preceding the distribution year. This amount is not reduced by taxes or fees unless the fees exceed two and one-half percent (2.5%), and if any fees exceed two and one-half percent (2.5%) then the amount of the disbursement shall be reduced by such excess.

(B) "Net income" means the collected dividends, interest and other income of the trust reduced by taxes on income and fees.

(C) "Pro-rata" means that the disbursements from the trust are to be made pro-rata during the year on a monthly, quarterly or semi-annual basis.

(2) The net earnings of each improvement care trust fund shall be paid to and shall be used and expended by the owners or officers and directors of the cemetery company, or by the trustee of the improvement care trust fund while the cemetery is not being operated by its owner, for the improvement care (as

defined in § 46-1-102) of the cemetery or separate geographical location of the cemetery for which the fund was established and for no other purpose.

(3) While a cemetery for which an improvement care trust has been funded is not being operated by its owner, the trustee may disburse net income from the trust to compensate any responsible person for work performed or expenses incurred in the improvement care of the cemetery. In investing these funds, the trustee shall exercise the judgment and care under the circumstances then prevailing which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income and capital appreciation as well as the probable safety of their capital. Within the limitations of the foregoing standard, subject to any express provisions or limitations contained in any particular trust instrument, the trustee is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically included, but not by way of limitation, corporate obligations of every kind, and stocks, preferred or common, which persons of prudence, discretion and intelligence acquire for their own accounts.

(4)

(A) When calculating the net earnings of a trust, the cemetery owner may select which method of calculation, using either subdivision (e)(1)(A)(i) or (e)(1)(A)(ii), that the cemetery owner desires to use for any given fiscal year. This shall be done by providing written instructions that shall be delivered to the trustee of the fund by no later than the last day of the preceding fiscal year. In the event that the method of calculation chosen by the cemetery owner prior to the start of the fiscal year would result in lower disbursements than would the other calculation, then the cemetery owner may deliver written instructions to the trustee of the fund

by no later than sixty (60) days prior to the end of that fiscal year to change the method of calculation.

(B) In the event that the trustee of the fund does not receive written instruction of the method of calculation to be used, then the trustee of the fund shall continue to calculate and disburse funds as had been done in the previous fiscal year. In the event that the trustee of the fund has never received written instruction of the method of calculation to be used, then the trustee shall calculate the net earnings of the trust using subdivision (e)(1)(A)(i).

(C) A cemetery owner may select a method of calculation to be used in the fiscal year during which this statute is enacted by delivering written instructions to the trustee of the fund by no later than sixty (60) days prior to the end of that fiscal year to select a method of calculation.

(D)

(i) If the date that this statute takes effect is designated as T, and if the principal market value of the trust at time T is designated as MV(T), and if the total contributions made to the principal of the trust from T until the time that the method of calculation is selected is designated as C, then in order to withdraw up to five percent (5%) of the trust pursuant to subdivision (e)(1)(A)(ii), the current market value after the withdrawal shall be greater than $.8 \times [MV(T) + C]$.

(ii) If a trust is established after the enactment of this statute, then the principal market value will be determined at the end of the trust's first fiscal year and will be designated as MV(N). Contributions made to the principal after that first completed fiscal year will be designated as C. In order to withdraw up to five percent (5%) of the trust pursuant to subdivision (e)(1)(A)(ii), the

current market value after the withdrawal shall be greater than $.8 \times [MV(N)+C]$.

(iii) Disbursements that are calculated pursuant to subdivision (e)(1)(A)(ii) shall be made on a pro rata basis.

(E) In order for a cemetery owner to receive distributions from the trust, whether calculated using subdivision (e)(1)(A)(i) or (e)(1)(A)(ii), the cemetery owner shall:

(i) Be current on payment of the annual registration fee as evidenced by a copy of the certificate of registration provided to the trustee; and

(ii) Be current on required deposits to the trust as evidenced by a certification provided to the trustee by the cemetery owner or, alternatively, be making payment on any arrearages through special arrangements with the department as evidenced by a certification provided to the trustee by the department.

SECTION 2. This act shall take effect July 1, 2005, the public welfare requiring it.